IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWELFTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 4727 of 2001

Between:

1. V. Sankara Rao, S/o. Late Appalaswamy,

Aged about 39 years, Staff No. 458469, Welder,

Zonal Workshop, APSRTC, R/o. 3/II/157, HUDA Colony,

Cantonment, Vizianagaram.

2. G. Guru Murthy, S/o. Late Simhachalam,

Aged about 34 years, Staff No.95126, Coach builder,

Zonal Workshop, APSRTC, R/o. 3/II/157, HUDA Colony,

Cantonment, Vizianagaram.

..... PETITIONERS

AND

1. APSRTC, rep., by the Secretary, Staff Retirement

Benefit Scheme, Musheerabad, Hyderabad.

2. APSRTC, rep., by the works Manager,

Zonal Workshop, V.T. Agraharam, Vizianagaram.

3. APSRTC, rep., by the Deputy C.A.O.,

Office of the Zonal Manager,

Zonal Workshop, V.T. Agraharam, Vizianagaram.

4. APSRTC, rep., by the P3 Clerk, Office of the

Works Manager, Zonal Workshop, V.T. Agraharam, Vizianagaram.

5. P. Regaiah, S/o. T. Geddayya,

Staff No.98473, Ex-Mechanic, R/o. Sai Nagar,

Near Central Bank, Totapalem, Vizianagaram.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate writ, order or direction more in the nature of a writ of Certiorari quashing the proceedings of the 1st respondent dt.23-11-2000 in proceedings No.F1/HBA(2201)/2000 which was not communicated to us and the consequential order passed by the 2nd respondent vide his proceeding No.M2/8(2)-2000-ZWS-VZM, dt.14-12-2000 as illegal, arbitrary and contrary to the rules and regulations of the APSRTC Staff Retirement Benefit Scheme and also Principles of Natural Justice and consequently direct the respondents 1 to 4 herein not to deduct the amounts from our salaries towards the loan due to the corporation from the 5th respondent.

Counsel for the Petitioner: SMT. M.BHASKARA LAKSHMI

Counsel for the Respondent Nos.1 to 4: MR.Y.VIVEKANANDA SWAMY

Standing Counsel for APSRTC

Counsel for the Respondent No.5: None appeared

The Court made the following:

ORAL ORDER:

Heard the learned Counsel for the petitioners and learned standing Counsel for the respondents No. 1 to 4. At the request, the writ petition is taken up for hearing.

Petitioners seek quashing of the proceedings of the first respondent dated 23-11-2000 and the consequential order of the second respondent dated 14-12-2000. By the second respondent's proceeding dated 14-12-2000 (impugned in the writ petition) Rs.409/- each was directed to be recovered from the salaries of the petitioners and to continue to recover till the amount due from the fifth respondent towards the loan obtained by the said respondent from the APSRTC has been discharged. The petitioners stood sureties for a Special House Building advance of Rs.49,000/- obtained by the fifth respondent from the APSRTC. The fifth respondent

was subsequently removed from the service of the corporation on 13-9-2000.

The petitioners and the fifth respondent were working in the Zonal Workshop, APSRTC, Vizianagaram. The fifth respondent availed Special House Building advance of Rs.49,000/- under the Staff Retirement Benefit Scheme introduced by the Corporation for the benefits of its employees. An employee desirous of obtaining such an advance has to deposit the title deeds of the property to the corporation by way of equitable mortgage and is also required to furnish an agreement executed by sureties, a promissory note and a declaration form. The petitioners stood surety. The equated monthly instalments recoverable from the salary of the fifth respondent towards discharge of the loan advance obtained by him was determined at Rs.818/- per month from August, 2000. This amount was recovered from the salary of fifth respondent. The fifth respondent was removed from service w.e.f. 13-9-2000 on account of misconduct committed while on duty. Therefore, orders were passed for recovery of amount from the salaries of the petitioners who stood as sureties and the impugned orders were issued by the respondents No. 1 and 2 for the said purpose.

The petitioners contend that as fifth respondent was removed from service without notice or opportunity to them and no notice or opportunity was also given to them by the respondent No. 1 and 2 before passing the impugned orders, the impugned orders are invalid and require to be said aside.

The liability of the petitioners for being recovered the amounts of Rs.409/- each per month in respect of the house building advance obtained by the fifth respondent and the recoveries of these amounts from the petitioners by the Respondent No. 1 and 2 are all the circumstances arising out of non-statutory relationship between the petitioners and the respondents. The relationship is contractual and has no statutory under pinnings. No public law issue is involved requiring adjudication under Article 226 of the Constitution of India.

Learned Counsel for the petitioners, Smt. Bhaskara Laxmi relies on the decision of a Division Bench of this Court in ***Y. TATACHARI VS. ACHARYA N.G. RANGA, AGRICULTURAL UNIVERSITY***, in support of the reliefs sought in the writ petition.

In the aforesaid case, the appellant, while employed with the university, availed study leave to complete his Ph.D. and for the said purpose executed a bond with the University to the effect that in the event of his resigning from service on returning to duty after expiry of the study leave or at any time within the period of five years after

his return to duty or on failing to complete the course and submit the thesis within three years from the date of joining, shall refund to the University, on demand, a sum of Rs.60,000/-. The appellant/writ petitioner retired from the service of the respondent University as a Horticulturist on 31-7-1998, but was nevertheless denied the terminal benefits namely pension and gratuity. He therefore approached this Court. The University sought to defend the denial of terminal benefits contending that the amount of Rs.60,000/- towards the bond executed could be recovered by the University. The Division Bench of this Court concluded that in the absence of any legal instrument or any provision in the applicable Rules entitling the recovery of the said amount from the terminal benefits payable, no recoveries could have been made and granted relief to the petitioners on such a conclusion.

In the case on hand no violation of statutory Rules or a statutory instrument is involved in recovering the amounts from the petitioners. The recoveries are made pursuant to the surety agreement that the petitioners had executed in favour of the employer towards a loan obtained by the fifth respondent.

In the above circumstances, this Court finds no warrant for grant of any relief under Article 226 of the Constitution of India.

The Writ petition is accordingly dismissed.

The interim Order dated 19-3-2001 stands dissolved.

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12-07-2004

ES/JSU

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Secretary, APSRTC, Staff Retirement Benefit Scheme, Musheerabad, Hyderabad.

2. The Works Manager, APSRTC, Zonal Workshop, V.T. Agraharam, Vizianagaram.

3. The Deputy C.A.O., APSRTC, Office of the Zonal Manager, Zonal Workshop, V.T. Agraharam, Vizianagaram.

4. The P3 Clerk, APSRTC, Office of the Works Manager, Zonal Workshop, V.T. Agraharam, Vizianagaram.

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